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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/328,877	06/09/1999	MARK E. GURNEY	6142.N2-CP	7413

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ART UNIT	PAPER NUMBER
1647	16

DATE MAILED: 07/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/328,877

Applicant(s)

Gurney et al.

Examiner

Sharon L. Turner, Ph.D.

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 4-24-02

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 1035 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 42-51 is/are pending in the application

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) _____ is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims 42-51 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

6) Other: _____

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Continued Prosecution Application

1. The request filed on 4-24-02 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/328,877 is acceptable and a CPA has been established. An action on the CPA follows.
2. Two Preliminary Amendments filed 4-24-02 have been received by the Office. The first amendment has been entered and has been fully considered. This amendment is directed to the cancellation of claims 1-41 and presentation of new claims 42-51. In a telephone interview with Applicant's representative Edward Rehberg it was determined that the second preliminary amendment directed to claims 3-18 and 44-97 was submitted in error and Applicant's representative requested that the amendment be disregarded as such. Thus, the second amendment has not been entered and the material therein has not been considered further.

Election/Restriction

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:
I-X. Claims 42-51, drawn respectively to polypeptides of SEQ ID Nos: 3, 4, 5, 6, 7, 8, 9, 21, 25 and 27 classified in class 530, subclass 350.
4. The inventions are distinct, each from the other because of the following reasons:
5. Groups I-X are related as products. The products are different and patentably distinct each from the other as they are comprised of different structural and functional features including different amino acids which are differentially capable of acting as an immunogen, exhibiting specific binding and directing immune responses. Only a search of SEQ ID NO:7 would

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encompass a search for SEQ ID NO's 3-6 and 8-9 as disclosed in Exhibit A. All other searches are not co-extensive to the other groups. There is no evidence that SEQ ID NO's:21, 25 and 27 would be encompassed by a search for SEQ ID NO:7 as indicated in Exhibit A.

6. Claim 42, Group V, link(s) inventions of claims 43-51, Groups I-IV and VI-X. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim 42. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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8. Because these inventions are distinct for the reasons given above and the search required for each of the groups is not required for any other group, restriction for examination purposes as indicated is proper.

9. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143). Applicant should clearly indicate the Group and SEQ ID NO: elected for examination.

10. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

11. Any inquiry of a general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for Group 1600 is (703) 308-4242.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to, Sharon L. Turner, Ph.D. whose telephone number is (703) 308-0056. The examiner can normally be reached on Monday-Thursday from 7:30-6:00 P.M.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (703) 308-4623.



Sharon L. Turner, Ph.D.
July 10, 2002